

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**Nashville, Tennessee**

**October 27, 2003**

**IN RE:**

**PETITION OF TENNESSEE UNE-P  
COALITION TO OPEN A CONTESTED  
CASE PROCEEDING TO DECLARE  
SWITCHING AN UNRESTRICTED  
UNBUNDLED NETWORK ELEMENT**

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**DOCKET NO.  
02-00207**

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**ORDER SUSPENDING PROCEEDINGS**

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This docket came before the Hearing Officer to evaluate the comments of the parties filed on September 25 and October 6, 2003.

On September 15, 2003, the Hearing Officer issued a *Notice of Filing*. In the notice, the Hearing Officer set dates for parties to comment on the effect on the instant docket of (1) the August 21, 2003 release by the Federal Communications Commission ("FCC") of its *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking* ("TRO Order") in CC Docket Nos. 01-338, 96-98 and 98-147 and (2) the opening of Docket Nos. 03-00490 and 03-00491 by the Tennessee Regulatory Authority ("TRA") in order to address the issues raised in the TRO Order.<sup>1</sup> Specifically, the notice directed the UNE-P Coalition<sup>2</sup> to file comments by

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<sup>1</sup> During a status conference on August 28, 2003, Chairman Deborah Taylor Tate announced that she had caused to be opened Docket No. 03-00490 to resolve issues relating to local switching for enterprise customers and Docket No. 03-00491 to resolve the 9-month issues raised in the TRO. Transcript of Proceedings, Aug. 28, 2003, pp. 7&11 (Status Conference in Docket No. 03-00460; Chairman Deborah Taylor Tate presiding). During the September 22, 2003 Authority Conference (after the issuance of the *Notice of Filing*), Chairman Deborah Taylor Tate announced that she had opened Docket No. 03-00526 to address batch hot cut issues and Docket No. 03-00527 to address loop and transport issues. She also stated that the panel in Docket No. 03-00491 would address local switching for mass-market customers, define the geographic markets, and determine the DS0/DS1 crossover point. These dockets will be collectively referred to hereinafter as the "TRA Triennial Proceedings."

<sup>2</sup> The UNE-P Coalition consists of NewSouth Communications, Corp; Birch Telecom of the South, Inc.; Ernest Communications, Inc.; Access Integrated Networks, Inc.; MCImetro Access Transmission Services, LLC; MCIWorldCom Communications, Inc.; and Z-Tel Communications, Inc.

September 25, 2003 explaining how the Hearing Officer should move forward in the instant docket and the remaining parties to file responsive comments by October 6, 2003.

On September 25, 2003, the UNE-P Coalition filed its comments in response to the *Notice of Filing*. The UNE-P Coalition requests that the Hearing Officer suspend any further proceedings in this docket pending the outcome of any appeals of the TRO Order and/or the completion of the TRA Triennial Proceedings. In support of this position, the UNE-P Coalition notes that such action will preserve the parties' rights to reinstitute these proceedings and the extensive data collected by the TRA. Further, the UNE-P Coalition notes that if the Hearing Officer suspends the docket, there will be no need to expend resources until the TRO Order appeals and/or the other TRA Triennial Proceedings are completed.

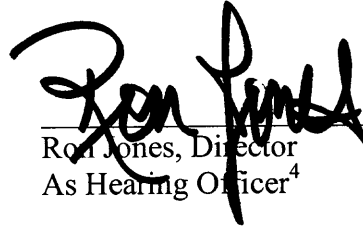
On October 6, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed its comments. BellSouth states that it has no objection to the Hearing Officer suspending this docket pending the outcome of the TRO Order appeals and/or the completion of the TRA Triennial Proceedings. No other party filed comments pursuant to the *Notice of Filing*.

Based on these filings, the Hearing Officer finds that the approach advocated by the UNE-P Coalition will allow the TRA as well as the parties to focus their efforts on the TRA Triennial Proceedings. Moreover, the issues the TRA will address in the TRA Triennial Proceedings will affect or resolve the issues in the instant docket. Therefore, given these findings and the lack of objection from any party, the Hearing Officer concludes that this docket should be suspended as suggested by the UNE-P Coalition.

**IT IS THEREFORE ORDERED THAT:**

Unless otherwise ordered, Docket No. 02-00207 shall remain open, but all proceedings therein shall be suspended pending the outcome of any appeals of the Federal Communication Commission's *Report and Order and Order on Remand and Further Notice of Proposed*

*Rulemaking* in CC Docket Nos. 01-338, 96-98 and 98-147 and/or the Tennessee Regulatory Authority's completion of Docket Nos. 03-00490,<sup>3</sup> 03-00491, 03-00526, and 03-00527.

  
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Ron Jones, Director  
As Hearing Officer<sup>4</sup>

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<sup>3</sup> At the October 6, 2003, Authority Conference the panel voted to accept the *Report and Recommendation of Hearing Officer*, issued by Director Sara Kyle, recommending that the "TRA decline to continue with this 90-day proceeding for the purpose of rebutting the presumption of no impairment for enterprise switching and that this Docket be closed." *In re: Implementation of the Federal Communications Commission's Triennial Review Order-90 Day Proceeding*, Docket No. 03-00490, *Report and Recommendation of Hearing Officer*, 2 (Sept. 29, 2003).

<sup>4</sup> During the July 23, 2002 Authority Conference, a panel of the Tennessee Regulatory Authority consisting of then Chairman Sara Kyle and Directors Deborah Taylor Tate and Ron Jones unanimously voted to appoint Director Ron Jones as the Hearing Officer to prepare the case for a hearing by the panel. Transcript of Proceedings, July 23, 2002, pp. 42-43 (Authority Conference).